

REMARKS

The above amendments and these remarks are responsive to the final Office action dated November 13, 2008, and are being filed for expedited review as a response after final under 37 C.F.R. § 1.116. Claims 52–74 are pending in the application, with claims 56, 66, and 73 withdrawn from consideration. In the Office action, the Examiner rejected each of the pending claims as follows:

- Claim 63 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite;
- Claims 52–55, 57, 58, 62–65, 67, 68, 71, 72, and 74 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,586,985 to Putnam et al. (“Putnam”) and by U.S. Patent No. 6,440,135 to Orbay et al. (“Orbay”); and
- Claims 59–61 and 69–71 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Putnam or Orbay in view of U.S. Patent No. 6,383,186 to Michelson (“Michelson”).

Applicant traverses the rejections, contending that all of the pending claims are definite and are patentable over the cited references, taken alone or in combination. Nevertheless, to expedite the issuance of a patent, and to more particularly point out and distinctly claim aspects of the invention that applicant wants to patent now, applicant has amended claims 52–55, 62–65, and 72. However, applicant reserves the right to pursue any of the amended claims at a later time. Applicant also has presented arguments showing that all of the pending claims are definite and are patentable over the cited references, taken alone or in combination. Accordingly, in view of the amendments above and the remarks below, applicant respectfully requests reconsideration of the application and prompt issuance of a Notice of Allowance covering all of the pending claims.

I. Prior Communication of Amended Claims

Applicant sent to the Examiner, on December 11, 2008, by facsimile transmission, a proposed Claim Listing corresponding to that presented in the present communication.

II. Claim Rejection – 35 U.S.C. § 112, Second Paragraph

The Examiner rejected claim 63 under 35 U.S.C. § 112, second paragraph, as being indefinite. More particularly, the Examiner stated that “the recitation ‘an orthogonal plane that includes a long axis of the longitudinal slot and that is oriented orthogonally to the longitudinal slot’ renders the claim vague and indefinite.” Applicant disagrees. Nevertheless, for the reasons set forth above, applicant has amended claim 63 to recite, in part, “an orthogonal plane is oriented orthogonally to the plane defined by the longitudinal slot and contains all of the second long axis.” Applicant believes this amendment to claim 63 should render the Section 112 rejection moot and respectfully requests withdrawal of the rejection.

III. Claim Rejections – 35 U.S.C. §§ 102 and 103

The Examiner rejected each of claims 52–55, 57–65, 67–72, and 74 as being anticipated or obvious. Each of claims 52–55, 57, 58, 62–65, 67, 68, 71, 72, and 74 was rejected as being anticipated by Putnam and by Orbay. Each of claims 59–61 and 69–71 was rejected as being obvious over a combination of Putnam and Michelson and over a combination of Orbay and Michelson. Applicant traverses the rejections, contending that the cited references, taken alone or in combination, do not disclose or suggest every element of any of the rejected claims. Nevertheless, for the reasons set

forth above, applicant has amended claims 52–55, 62–65, and 72. The pending claims are patentable over the cited references for at least the reasons set forth below.

A. Claims 52–61

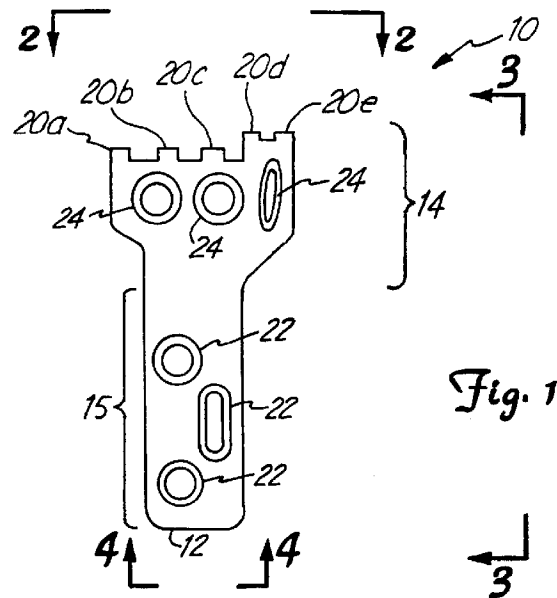
1. Claim 52

Independent claim 52 is directed to a method of bone fixation and, as currently amended, reads as follows:

52. (Currently Amended) A method of bone fixation, comprising:
selecting a bone plate including a wider head portion connected to a narrower body portion, the bone plate defining a **plane and a first long axis, the bone plate also defining** ~~[[and]]~~ a longitudinal slot, **the longitudinal slot defining a second long axis that is at least substantially parallel to** ~~extending along the first long axis, the bone plate also defining a plurality of openings disposed in the head portion and further defining a transverse slot disposed generally between the longitudinal slot and the plurality of openings,~~ **the transverse slot defining a third long axis oriented at least generally parallel to the plane and at least substantially orthogonal to the second long axis defined by the longitudinal slot** ~~and extending transversely to the long axis; and~~
attaching the bone plate to at least one bone with fasteners received in the longitudinal slot, the plurality of openings, and the transverse slot.

Claim 52 is not anticipated by Putnam or Orbay because neither reference discloses or suggests every element of the currently amended claim. For example, neither reference discloses or suggests a “transverse slot defining a third long axis oriented at least generally parallel to the plane [defined by the bone plate] and at least substantially orthogonal to the second long axis defined by the longitudinal slot.” In addition, neither reference discloses or suggests “a transverse slot disposed generally between the longitudinal slot and the plurality of openings.”

Putnam relates to a method and apparatus for fixation of distal radius fractures. An embodiment of a bone plate 10 disclosed by Putnam is presented in Figure 1 of the reference, which is reproduced here to facilitate review.



Bone plate 10 defines circular holes 22, oval hole 22, circular holes 24, and elliptical hole 24. The bone plate also includes tines 20a-20e formed at an end of the bone plate.

In rejecting claim 52, the Examiner apparently identified elliptical hole 24 of bone plate 10 as a transverse slot. However, elliptical hole 24 is not a transverse slot as recited by currently amended claim 52 because elliptical hole 24 does not define “a third long axis oriented ... at least substantially *orthogonal* to the second long axis defined by the longitudinal slot,” as recited by currently amended claim 52. Instead, a long axis defined by elliptical hole 24 is at least substantially *parallel* to the long axis defined by oval hole 22. Also, elliptical hole 24 is not “a transverse slot disposed generally between the longitudinal slot and the plurality of openings.” In particular, elliptical hole 24 is disposed laterally of circular holes 24 in the bone plate, instead of generally between

circular holes 24 and oval hole 22. Furthermore, the gaps in the bone plate formed between pairs of tines 20a-20e cannot be construed as the plurality of openings recited by claim 52 because the gaps are not used to receive fasteners that attach the bone plate to bone, as recited in claim 52.

Orbay relates to a volar fixation system with stabilization pegs. An embodiment of a bone plate 210 of the system, is shown in Figures 10 and 15, which are reproduced here to facilitate review.

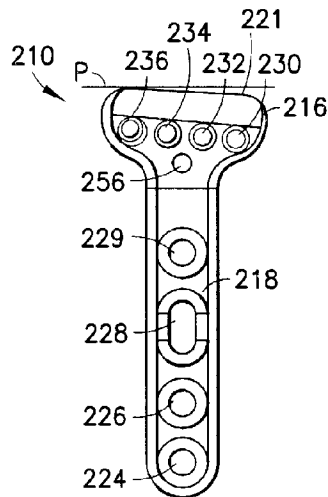


FIG. 10

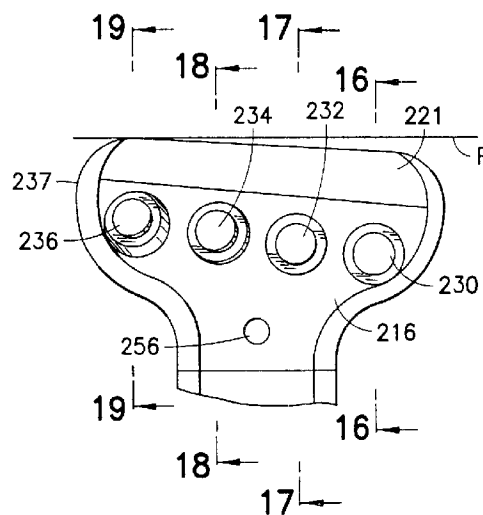


FIG. 15

Bone plate 210 includes a head portion 216 extending from a body portion 218. Each of the head and body portions defines a set of circular openings for receiving pegs or screws that couple the bone plate to the radius bone. In particular, head portion 216 defines peg holes 230-236 for receiving pegs, and body portion 218 defines screw holes 224, 226, 228 and 229 for receiving bone screws. One of the screw holes, namely, screw hole 228, has an oval configuration.

In rejecting claim 52, the Examiner identified peg hole 236 of Orbay's bone plate 210 as a transverse slot. However, peg hole 236 is not a transverse slot as recited by currently amended claim 52 because peg hole 236 does not define a third long axis "oriented at least generally *parallel* to the plane" defined by the bone plate, as recited by currently amended claim 52. Also, peg hole 236 is not "a transverse slot disposed generally between the longitudinal slot and the plurality of openings." In particular, peg hole 236 is disposed laterally of peg holes 230-234 in the bone plate, instead of generally between peg holes 230-234 and oval screw hole 228.

Michelson relates to a single-lock skeletal plating system and was cited against other claims in combination with Putnam or Orbay. However, Michelson does not cure the defects in Putnam and Orbay described above.

In summary, for at least the reasons presented above, claim 52 is patentable over the cited references taken alone or in combination. Claim 52 thus should be allowed. Claims 53–61, which depend from independent claim 52, also should be allowed for at least the same reasons as claim 52.

2. Claim 53

Claim 53, as currently amended, recites "a transverse slot elongated along a path that is visibly arcuate when the transverse slot is viewed along the central axis" defined by the transverse slot. None of the cited references discloses or suggests such a transverse slot that is visibly arcuate. Accordingly, claim 53 also should be allowed not only for depending from allowable claim 52 but also for this additional reason.

B. Claims 62–71

Independent claim 62 is directed to a method of bone fixation and, as currently amended, reads as follows:

62. (Currently Amended) A method of bone fixation, comprising:
selecting a bone plate defining a plane and a first long axis, the bone plate also defining [[and]] a longitudinal slot, the longitudinal slot defining a second long axis that is at least substantially parallel to ~~extending along the~~ first long axis, the bone plate also defining a plurality of openings and further defining a transverse slot disposed generally between the longitudinal slot and the plurality of openings, the transverse slot defining a third long axis oriented at least generally parallel to the plane and at least substantially orthogonal to the second long axis defined by the longitudinal slot ~~and extending transversely to the long axis along an arcuate path;~~ and
attaching the bone plate to at least one bone with fasteners received in the longitudinal slot, the plurality of openings, and the transverse slot,
wherein the transverse slot defines a plane and a central axis extending orthogonally to the plane defined by the transverse slot, and wherein the step of selecting a bone plate includes a step of selecting a bone plate including a transverse slot elongated along a path that is visibly arcuate when the transverse slot is viewed along the central axis.

Claim 62 is patentable over the cited references because the references, taken alone or in combination, do not disclose or suggest every element of the claim. For example, and for the reasons presented above for claim 52, the references do not disclose or suggest a “transverse slot defining a third long axis oriented at least generally parallel to the plane [defined by the bone plate] and at least substantially orthogonal to the second long axis defined by the longitudinal slot,” or “a transverse slot disposed generally between the longitudinal slot and the plurality of openings.” Also, the references do not disclose or suggest “a transverse slot elongated along a path that is visibly arcuate

when the transverse slot is viewed along the central axis” defined by the transverse slot. Therefore, for at least these reasons, claim 62 should be allowed. Claims 63–71, which depend from claim 62, also should be allowed for at least the same reasons as claim 62.

C. Claims 72–74

Independent claim 72 is directed to a method of bone fixation and, as currently amended, reads as follows:

72. (Currently Amended) A method of bone fixation, comprising:
selecting a bone plate defining a long axis and a plane ~~first opening~~, the bone plate also defining a first opening and a plurality of second openings and further defining a transverse slot disposed generally between the first opening and the plurality of second openings, the transverse slot defining a long axis oriented at least generally parallel to the plane and at least substantially orthogonal to the long axis defined by the bone plate ~~and extending transversely to the long axis along an arcuate path~~; and
attaching the bone plate to at least one bone with fasteners received in the first opening, the plurality of second openings, and the transverse slot,
wherein the transverse slot defines a plane and a central axis extending orthogonally to the plane defined by the transverse slot, and wherein the step of selecting a bone plate includes a step of selecting a bone plate including a transverse slot elongated along a path that is visibly arcuate when the transverse slot is viewed along the central axis.

Claim 72 is patentable over the cited references because the references do not disclose or suggest every element of the currently amended claim. For example, and for at least similar reasons to those presented above for claim 52, the references do not disclose or suggest a “transverse slot defining a long axis oriented at least generally parallel to the plane [defined by the bone plate] and at least substantially orthogonal to the long axis

defined by the bone plate,” or “a transverse slot disposed generally between the first opening and the plurality of second openings.” Also, the references do not disclose or suggest “a transverse slot elongated along a path that is visibly arcuate when the transverse slot is viewed along the central axis” defined by the transverse slot. Therefore, for at least these reasons, claim 72 should be allowed. Claims 73 and 74, which depend from claim 72, also should be allowed for at least the same reasons as claim 72.

IV. Conclusion

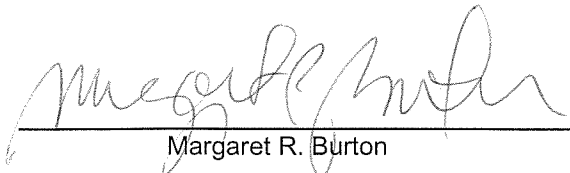
Applicant believes that the present communication fully addresses all issues raised by the Examiner in the Office action and that all of the pending claims are patentable over the cited references. Accordingly, applicant respectfully requests that the Examiner issue a Notice of Allowance covering all of the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record, or his associate, Stan Hollenberg (Reg. No. 47,658), both at (503) 224-6655.

Respectfully submitted,

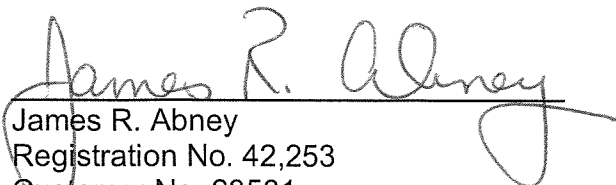
KOLISCH HARTWELL, P.C.

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